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September 15, 2014

VIA ELECTRONIC & US MAIL

Ms. Jennifer LaPoma ATTN: Lower Passaic River Remedial Project Manager Emergency and Remedial Response Division U.S. EPA, Region 2 290 Broadway, 20th Floor New York, New York 10007

Re: Monthly Progress Report No. 24 – August 2014 Lower Passaic River Study Area (LPRSA) River Mile 10.9 Removal Action CERCLA Docket No. 02-2012-2015

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of August, 2014.

Meetings/Conference Calls

On August 11, EPA and CPG met at Riverside Park to further discuss the e-mail dated July 9, 2014 from de maximis, inc. to EPA. The e-mail discusses the CPG's response to an earlier meeting with EPA related to concerns raised by the boating community about elevated armor stones on the RM 10.9 Removal Area cap. Based upon the discussions of the meeting EPA will respond to the e-mail with additional comments.

Correspondence

- On August 5, EPA notified CPG that Tierra was tentatively planning on conducting a location survey on July 11 of the Jersey City Municipal Utilities Authority (JCMUA) buried water lines located in the "no dredge zone" in RM 10.9 Removal Area.
- On August 7, EPA notified CPG that it had met with the boating community on August 4 to
 discuss the boating communities concerns with the elevated armor stones located on the
 engineered cap. EPA offered to point out locations of elevated stones during the upcoming
 August 11 meeting with the CPG. EPA requested the removal of a cable located in the "no
 dredge zone" and a figure depicting hard pan bedrock zones.
- On August 7, CPG responded to EPA's request for a figure of hard pan areas at RM 10.9 Removal Area. CPG reported that it has requested a figure from the engineer and would forward it to EPA upon receipt. Additionally CPG notified EPA that it has made multiple



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attempts to contact the boating community about earlier offers to deploy buoys at RM 10.9 Removal Area. Lastly, CPG informed EPA that the cable located in the "no dredge zone" cannot be removed as CPG does not have permission from JCMUA to preform work in the "no dredge zone."

- On August 7, CPG provided EPA with a figure depicting hard pan zones encountered during RM 10.9 Removal activities.
- On August 13, CPG contact the U.S. Coast Guard and discussed the administrative requirements to deploy buoys adjacent to the RM 10.9 Removal Area cap.
- On August 15, CPG provided EPA with the RM 10.9 Removal Action Progress Report No. 23 for July 2014.
- On August 15, CPG informed EPA that CPG has made additional attempts to contact the boating community about earlier offers to deploy buoys adjacent to RM 10.9 Removal Area cap. As of August 15, CPG has not received any additional communication from the boating community.
 - CPG also informed EPA that they have contacted a local marine contractor to request the development of a scope of work and schedule to deploy buoys at the RM 10.9 Removal Area cap. The contractor indicated that permitting for the buoys would take at a minimum of 2 months, thus buoys could not be installed before middle to late October 2014. Additionally, buoys would need to be removed by the end of November due to damage from river ice.
- On August 20, EPA notified CPG that it had received the information related to the deployment of PATONs (buoys). EPA requested that the CPG expedite the application and offered to help expedite the application with partner agencies. Lastly, EPA requested a target date for the application submission.
- On August 26, EPA responded to CPG's July 22 e-mail proposal to address elevated armor stone visible on the RM 10.9 Removal Area cap. EPA expressed its concern with the use of only mechanical methods to address the elevated armor stone. EPA suggested that the use of a manual labor option should be evaluated to move the elevated armor stone. Lastly, EPA stated that it did not believe that the addition of alternative capping materials would adequately address the elevated armor stone. EPA requested a draft action plan from the CPG by September 12, 2014. The action plan should contain what efforts will be undertaken, health and safety, how elevated armor stones will be removed and placed, and a schedule to perform this work. Lastly, EPA requested a conference or meeting to discuss how EPA can help to expedite the effort after the submission of the plan.

Work

 CPG completed and submitted a Draft Final Report for the Removal Action to EPA on August 27.

(b) Results of Sampling and Tests

None

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- (c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction
 - None
- (d) <u>Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays</u>
 - The CPG believes that only physical monitoring is sufficient and required to monitor the effectiveness and integrity of the cap. If the RM 10.9 cap is similar and consistent to that implemented as any final remedy for the LPRSA, then the need for long-term chemical monitoring for the cap should be determined as part of the overall LPRSA long-term monitoring plan and regular five-year reviews. This appears to be the rationale developed for the Hudson River and Onondaga Lake and should apply to the RM 10.9 Removal Action as well.

The RM 10.9 Removal Action was implemented to reduce the risk associated with the direct contact exposure to sediments by people due to elevated concentrations of COPCs in RM 10.9 surface sediments. The cap physically prevents direct contact to underlying sediment by river users. As an added benefit an active layer was included to further enhance the protectiveness of the cap. In the near term, the surface of the cap is likely to be recontaminated by sediment deposition which is likely to be in the low 100s of ppt of TCDD – two orders of magnitude less than the pre-dredge surface of the RM 10.9 Removal Area. The CPG does not agree with Region 2's rationale for an aggressive short-term chemical monitoring program of the RM 10.9 cap. It is unnecessary to evaluate the short-term effectiveness of the cap to chemically isolate COPCs when the primary goal of the Removal Action and the construction of the cap were to remove and reduce the direct contact risk due to the presence of elevated concentrations in the surface sediment.

On the Hudson River, Region 2 requires monitoring of the Phase 2 engineered caps for physical integrity and chemical isolation effectiveness. The chemical isolation effectiveness monitoring will occur in designated sentinel areas 10 years after completion of cap construction in those areas and then at 10-year intervals, or as soon as practical after a flood event exceeding the design recurrence interval for those caps. For Onondaga Lake, long-term monitoring of the cap includes routine physical and chemical monitoring which is anticipated to occur 5, 10, 20, and 30 years after construction begins. For the Lower Passaic River Study Area, EPA has required no chemical monitoring at the Lister Avenue Phase 1 Removal Action site. Region 2's requirements for the RM 10.9 Removal Area are completely inconsistent with the chemical monitoring requirements for frequency and schedule established at other Region 2 capping sites such as the Hudson River and Onondaga Lake.

The CPG provided comments to Region 2 on March 31, 2014 in response to the Region's January 24, 2014 comments on CPG's draft QAPP Worksheet 9 (dated January 22, 2014).

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Region 2 and the CPG have initiated dispute resolution to resolve the differences on the scope of the RM 10.9 Long Term Monitoring Plan. The CPG provided its concerns with the Region's proposed scope of long term monitoring on June 23, 2014.

- The CPG strongly disagrees with the EPA's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties' obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31, 2013 letter to EPA and to which the Region has not responded.
- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.

If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.

John A. Rolfe

RM 10.9 Removal Action Project Coordinator

cc:

Pat Hick, EPA Office of Regional Counsel William Hyatt, CPG Coordinating Counsel Jay Nickerson, NJDEP Frank Tsang, CDM-Smith Elizabeth Franklin, US Army Corps of Engineers Reyhan Mehran, NOAA Clay Stern, FWS